

REMARKS

Claims 1, 2, 5-14, and 16-20 are currently pending. Claims 1, 2, 5-14, and 16 are amended. Claims 3, 4, and 15 have been canceled. New claims 17-20 have been added. No new matter is being presented by way of these amendments.

In addition, the amendments to independent claims 1, 11, and 16 are closely based on aspects originally presented in dependent claims 3 and 4. Accordingly, a new search should not be required.

Claim Rejections under 35 U.S.C. § 101

Claims 15 and 16 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant has canceled claim 15. With respect to claim 16, the Examiner asserts that the recited “program code carrier” reads on a signal. Claim 16 has been amended to recite a “program code *memory*.” (Emphasis added.) A “program code memory” is a tangible article of manufacture, and is thus statutory subject matter. Thus, applicant respectfully requests that the Examiner withdraw this rejection.

Claim Rejections under 35 U.S.C. § 102(b)

Claims 1-4, 6, and 12-23 were rejected under 35 U.S.C. § 102(b) as being unpatentable over International Publication No. WO 00/51380 to Rimpela et al. (“Rimpela”).

Applicant’s Specification describes a radio device testing system that includes a perturbation means that “enables perturbation and subsequent monitoring of a radio stack operation” and that “may also directly alter data in a radio message en-route through the software stack.” Applicant’s Specification, Abstract.

Rimpela does not disclose the alteration of radio message data *en-route through a radio stack*. In particular, Rimpela describes a testing apparatus that interacts with a test procedure 307 associated with protocol layers of a mobile station by way of special test messages. Rimpela, Abstract, Figure 3, and page 14, lines 20-26. More specifically, in response to receipt of a test message, the test procedure 307 initiates transmission of data to the testing

apparatus. *Id.* Rimpela's test procedure does not appear to alter radio data as it passes through the protocol layers.

Turning now to the language of the claims, Applicant's claims recite aspects nowhere taught, suggested, or motivated by Rimpela. In particular, claims 1, 11, and 16 recite details about altering radio message data en route through a software radio stack. For example, independent claim 1, as amended, recites, "stack perturbation means ... for ... *altering data of a radio message en route through one of said plurality of logical layers of said software radio stack.*" Independent claim 11, as amended, recites, "*altering data of a radio message en route through one of said plurality of logical layers of said software radio stack.*" Independent claims 16, as amended, recites, "*altering data of a radio message en route through one of said plurality of logical layers of said software radio stack.*" (Emphasis added throughout.)

Rimpela does not teach, suggest, or motivate altering the data of a radio message en route through a layer of a software radio stack. The Examiner asserts that Rimpela discloses this aspect at page 14, line 10 – page 15, line 15, and Figure 3. Office Action dated September 30, 2008 (hereinafter, "Office Action"), pp. 3 and 4, rejecting claims 3 and 4. The cited passage references Figure 5, which describes Rimpela's testing function in the context of protocol layers 301-305 of a mobile station. From the description, it is clear that Rimpela utilizes test messages to initiate data transmissions, and does not actually alter the data of radio messages en route through a layer of a software radio stack. (Rimpela, p. 14, lines 20-26.)

The fact that Rimpela does not alter data of radio messages en route through a layer of a software radio stack is reinforced by an examination of Rimpela's Figure 3. In particular, Figure 3 shows the operation of Rimpela's test procedure 307 in the context of protocol layers 301-305 of a mobile station. Rimpela, Figure 3, page 6, line 24 – page 7, line 8; page 15, line 34 – page 16, line 8. Note that data transmission 308 from the mobile station does not interact with the test procedure 307. Rimpela, Figure 3. Therefore, because test procedure 307 does not have access to the data transmission 308, the test procedure appears to be unable to alter the data transmission. Furthermore, test messages 310 received or data 311 transmitted by the test procedure 307 do not reach the upper protocol layer 306, or otherwise pass through the test procedure 307 to some other layer or component of the mobile station. Rimpela, Figure 3;

page 16, lines 3-6. Therefore, because the test messages 310 and data 311 begin and/or end with the test procedure 307, the test procedure cannot be said to alter data *en route* through a software radio stack. Accordingly, Rimpela does not teach, suggest, or motivate “alter[ing] the data of a radio message *en route* through one of said plurality of logical layers of said software radio stack,” or similar language recited by independent claims 1, 11, and 16.

Claim Rejections under 35 U.S.C. § 103(a)

In addition, claims 5 and 10 are rejected as being unpatentable over Rimpela in view of allegedly admitted prior art. Claims 7-9 and 14 are rejected as being unpatentable over Rimpela in view of alleged well known art.

As an initial matter, these claims are allowable for at least the reasons discussed with respect to claims 1 and 11, above, by virtue of their dependencies.

With respect to claims 7, 9 and 14, Applicant respectfully traverses the Examiner’s taking of Official Notice. In particular, with respect to claim 7, the Examiner takes Official Notice of “client/server architectures.” While claim 7 does recite “client computers” and a “server computer,” the claim includes additional aspects that the Examiner is not free to ignore. In particular, the claim recites “said server computer synchronizes and controls perturbation, testing and monitoring of said radio network.” Thus, even if client/server architectures were well known at the time of Applicant’s invention, client/server architectures, standing alone, do not teach, suggest, or motivate a server computer that “synchronizes and controls perturbation, testing and monitoring.”

Furthermore, with respect to claims 9 and 14, the Examiner takes Official Notice of interruptible power supplies that are “interruptible under control of said radio monitoring means and said server computer.” Applicant respectfully reminds the Examiner that Official Notice should be used only in cases when the noticed facts are “of notorious character and serve only to ‘fill in the gaps’ in an insubstantial manner.” MPEP 2144.03(E). Thus, even if interruptible power supplies are well known, it is hard to see how such power supplies, under the control of *both* a “radio monitoring means” and a “server computer,” taken as a whole can be considered an insubstantial gap filler.

Conclusion

For at least the forgoing reasons, independent claims 1, 11, and 16 are allowable in view of Rimpela. In addition, dependent claims 2, 5-10, 12-14, and 17-20 are believed to be allowable at least by virtue of their dependencies.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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